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In the Supreme Court of the United States

OCTOBER TERM, 1976

UNITED STATES OF AMERICA, APPELLANT

v.

BOARD OF COMMISSIONERS OF SHEFFIELD, ALABAMA, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA

JURISDICTIONAL STATEMENT

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OPINIONS BELOW

The opinions of the district court (Apps. B and C, *infra*, pp. 2a, 9a) are not reported.

JURISDICTION

The order of the three-judge district court denying the United States' application for an injunction under Section 5 of the Voting Rights Act of 1965, as

amended, 42 U.S.C. 1973c, and dismissing the complaint, was entered on December 13, 1976 (App. D, *infra*, p. 20a). The district court's order denying the United States' motion for reconsideration was entered on March 31, 1977 (App. A, *infra*, p. 1a).

The United States filed a notice of appeal on May 11, 1977 (App. E, *infra*, p. 22a). The jurisdiction of this Court rests on 42 U.S.C. 1973c and 28 U.S.C. 1253. *Allen* v. *State Board of Elections*, 393 U.S. 544, 560-563; *Perkins* v. *Matthews*, 400 U.S. 379.

QUESTIONS PRESENTED

1. Whether voting changes enacted by a city which is within a state designated for coverage under Section 4 of the Voting Rights Act of 1965 must be precleared under Section 5 of the Act before they may become effective.

2. If so, whether the Attorney General's decision to interpose no objection to a referendum in which the voters of Sheffield, Alabama, decided to change from a commission to a mayor-council form of municipal government constituted clearance of the method by which city councilmen were to be elected.

STATUTES INVOLVED

Sections 4, 5, and 14(c)(2) of the Voting Rights Act of 1965, 79 Stat. 438, as amended, 42 U.S.C. (Supp. V) 1973b, 1973c, and 1973*l*(c)(2), respectively, are set forth in the Appendix F, *infra*, pp. 23a-29a.

STATEMENT

Section 5 of the Voting Rights Act, as amended, 42 U.S.C. (Supp. V) 1973c, provides: "Whenever a State or political subdivision [covered under Section 4 of the Act] shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964 * * *"[1] the change has no effect as law unless "such State or subdivision" obtains a declaratory judgment from the United States District Court for the District of Columbia that the change does not have the effect of denying or abridging the right to vote on account of race or color. Alternatively, the change may be enforced if within 60 days after its submission to him, the Attorney General has interposed no objection to it. States or political subdivisions are subject to Section 5 if they maintained any test or device as a prerequisite for voting or registration on November 1, 1964, as certified by the Attorney General, and if the Director of the Census determines that less than 50 percent of the persons of voting age residing within the state or political subdivision were registered on November 1, 1964, or that less than 50 percent of such persons voted in the presidential election of that year.[2]

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[1] The operative dates were extended to November 1, 1968, by Pub. L. 91-285, 84 Stat. 314 (1970), and to November 1, 1972, by Pub. L. 94-73, 89 Stat. 402, 404 (1975).

[2] Section 4(c) of the Act, 42 U.S.C. 1973b(c), defines test or device as a prerequisite for voting or registration requiring

On August 6, 1965, the Attorney General and the Director of the Census made determinations designating the State of Alabama as a state covered by Section 4 of the Voting Rights Act. 30 Fed. Reg. 9897. Between August 6, 1965, and April 15, 1977, the Attorney General received submissions of more than 1,000 changes from the State of Alabama and from cities and counties within it. Almost 700 of these changes were tendered by 91 Alabama cities.[3]

On March 20, 1975, the city of Sheffield, Alabama, wrote the Attorney General to "give notice of the proposal of submitting to the qualified voters of the City, whether the present commission form of government shall be abandoned in favor of the Mayor and Alderman form . . ." The city advised that "present existing voting wards are not changed at the time of voting (but may be equitably adjusted at a later date) and [that in Sheffield] the form of government (mayor-alderman) existed in 1912 and if the present commission type is abandoned, the previous form would automatically be reinstated" (Stip. Ex. 1).[4] On May 13, 1975 the city's electorate approved the proposal (App. C, *infra*, p. 10a).

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a person to demonstrate literacy or understanding, educational achievement or knowledge, or good moral character, or to prove these qualifications by the voucher of other persons.

[3] These figures were derived from a survey of Department of Justice records by the Voting Rights Section of the Department's Civil Rights Division.

[4] "Stip. ——" refers to the stipulation of fact, and exhibits attached thereto, filed by the parties in the district court.

The Attorney General replied to the city on May 23, 1975.[5] He advised that he "does not interpose an objection to the holding of the referendum," but pointed out that his failure to object "does not bar any subsequent judicial action to enjoin the enforcement of the change;" he also noted that "[s]ince voters in the city of Sheffield elected to adopt the mayor-council form of government on May 13, 1975, that change is also subject to the preclearance requirements of Section 5" (Stip. Ex. 2).

The Attorney General's letter also requested that if the city proposed to seek clearance through the Attorney General, rather than by a proceeding in the District Court for the District of Columbia, that it should submit detailed information concerning the change, including a description of "the aldermanic form of government which existed in 1912 and the method by which it was elected, *i.e.* the number of aldermen, the terms and qualifications for the mayor and aldermen, whether the aldermen were elected at large or by wards, whether there were numbered posts, residency, majority vote or staggered term requirements for the aldermanic seats, and whether single-shot voting was prohibited" (Stip. Ex. 2).

Thereafter, the city made a submission to the Attorney General, including a post-referendum brochure on the mayor-council form of government for the city, which indicated that under Code of Ala., Tit.

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[5] The city's letter had been received by the Attorney General on March 26, 1975 (Stip. Ex. 1).

37, § 426 (Cum. Supp. 1973), the city would be divided into four wards of substantial equality of population, that each ward would have two council seats, that councilmen from each ward would be elected by the city at large, and that candidates would run for numbered places (Stip. Ex. 3).

On December 22, 1975, the Attorney General requested additional information, including advice as to whether the city would return to the aldermanic form existing as of 1912, and whether the change was consistent with Alabama law as explained in an opinion of the Attorney General of Alabama (Stip. Ex. 3) dated August 19, 1968. Among other things the Attorney General requested a detailed map showing ward boundaries, population distribution by race for each ward, and the history of black candidacy for city and county offices since 1965 (Stip. Ex. 4).

The city furnished this information as well as the opinion of its counsel that the 1912 law was the same as present law with respect to the number of aldermen, residency, and majority vote requirements, and that the change was consistent with Alabama law. The submission also showed that Sheffield has a total population of 13,115, of which 19 percent (2,526 persons) are black, and that most of these black residents (2,222) were concentrated in ward 2, where they comprise 68.5 percent of the total ward population (Stip. Ex. 5).

The Attorney General considered the city's submission to be complete as of May 5, 1976, the date

this information was received. On July 6, 1976, the Attorney General advised the city that he did not "interpose any objection to the change to a mayor-council form of government, * * * to the proposed district lines or to the at-large election of the mayor and the president of the council. We are, however, unable to conclude that the at-large election of councilmen required to reside in districts will not have a racially discriminatory effect" (Stip. Ex. 6). Accordingly he objected to implementation of the proposed at-large method of electing city councilmen (*ibid.*).

Notwithstanding the Attorney General's objection, the city scheduled an at-large council election for August 10, 1976. On August 9, the Attorney General filed this action to enjoin the election on the ground that the city had not obtained preclearance under Section 5. On December 13, 1976, the three-judge district court convened under Section 5 dismissed the complaint[*] on the ground that Section 5 of the Act provides that only designated States and political subdivisions of States need submit proposed changes in their voting laws for preclearance. Since political subdivisions are defined in Section 14(c)(2) of the Act as counties, parishes or other subdivisions

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[*] The district court's order of December 13, 1976, withdrew a previous opinion and order of the court, entered September 29, 1976, holding that the Attorney General's action was untimely. On reconsideration the court concluded that the 60-day period for interposing an objection under Section 5 expired on July 6, 1976, the next full business day after the 1976 Independence Day holiday (App. C, *infra*, p. 11a).

which conduct registration for voting, it concluded that the city of Sheffield was not a political subdivision because in Alabama registration is conducted by the counties (App. B, *infra*, pp. 14a-15a). The court rejected the government's contention that "if an entire state is determined to be covered the 'or in any political subdivision' language is not applicable, and the definition of 'political subdivision' has no relevance in determining the Section 5 obligations of the covered state" (App. C, *infra*, p. 4a).

The district court also held that by interposing no objection to the city's referendum, the Attorney General had effectively granted clearance to the at-large method of electing the city council, because Code of Ala., Tit. 37, § 426 (Cum. Supp. 1973) provides that in Alabama cities of less than 20,000 population, two aldermen from each ward shall be elected at-large. Therefore, the court reasoned, the Attorney General's failure to object to the referendum ended his authority concerning voting changes to be effected under Section 426 if the proposal for a mayor-council government prevailed.[7]

[7] Circuit Judge Rives declined to concur in this portion of the opinion on the ground that the Attorney General's letter of May 23, 1975, "expressly conditioned his failure to object to the holding of the referendum by stating that the implementation or enforcement of the change in form of government is subject to the pre-clearance requirement of Section 5 of the Voting Rights Act" (App. B, *infra*, p. 19a).

THE QUESTIONS ARE SUBSTANTIAL

1. By holding that cities and other political entities that do not conduct voter registrations are excluded from the preclearance requirements of Section 5 of the Voting Rights Act, even though the States within which they are located are covered by Section 4 of the Act, the district court has severely limited the statute's effectiveness. The district court's construction would enable cities within covered states to dilute the voting rights of minorities by such devices as redistricting, at-large or multi-member elections, and annexations, even though the use of these devices by local governments was a major reason for adoption and continuation of the Act's preclearance requirements. Cf. *Perkins* v. *Matthews*, 400 U.S. 379, 388-389.[8] This immunization of voting changes by local governments from Section 5 is not required by the Act's language, and is inconsistent with the Act's structure, its original legislative history, the Attorney General's consistent interpretation of it since its adoption in 1965, and Congress' endorsement of that interpretation upon extending and amending the Act in 1970 and in 1975.

The district court's conclusion is based upon a literal reading of Section 5 of the Act, which requires "a State or political subdivision" covered under Section 4(b) to obtain preclearance for voting changes

[8] *Perkins* involved changes in the location of polling places and changes in municipal boundaries through annexation by the City of Canton, Mississippi.

before they may be implemented. We submit, however, that when Sections 5 and 4(b) are read in the light of the Act's structure, purpose, and administrative and legislative history, it is manifest that all political units within a State, or within a political subdivision of a State, which have been designated under Section 4(b), are subject to Section 5. The definition of "political subdivision" in Section 14(c)(2) serves only to define for purposes of Section 4(b) the kind of political subdivisions that are subject to the "triggering" determinations by the Attorney General and the Director of the Census. It is not, we submit, an exclusive definition which places cities within designated states or political subdivisions outside the coverage of the Act.

This may be seen from the structure of the Act itself. Section 4(a) provides that no citizen may "be denied the right to vote in any Federal, State or *local* election because of his failure to comply with any test or device *in any* State" which is within the coverage of the Act as defined in Section 4(b). The provisions of Section 4(a) in turn "apply *in* any State *or in* any political subdivision of a state" which the Attorney General finds maintained a test or device on the date of the Presidential election, and in which less than 50 percent of the eligible voters actually registered or voted (emphases added).

The scope of Section 5 in turn depends on Section 4. It applies to voting changes by "a State or political subdivision with respect to which the prohibitions set forth in section 4(a) * * * based upon determinations

made under the first sentence of Section 4(b) are in effect * * *." When the two sections are read together, therefore, it follows that local elections within a state or political subdivision are among the subjects of change which must be precleared. That the requirements or procedures for the local elections are enacted by the local political entity, rather than by the designated State or designated political subdivision, must be as irrelevant to Section 5 as it is to the concomitant prohibition of Section 4(a) against the use of tests or devices in local elections if the Act is to be internally consistent.

As the disjunction "State or political subdivision" indicates, only when the State itself has not been designated under Section 4(b) does it become necessary to consider, for purposes of Section 4, the definition of "political subdivision" in Section 14(c)(2), for if the State has been designated, local entities, including counties, parishes, and other bodies, are within Section 4's coverage. Indeed, the district court stated that if a State is designated, "political subdivisions" within it, as defined in Section 14(c)(2), are automatically covered (App. B, *infra*, p. 6a; App. C, *infra*, p. 13a). Section 14(c)(2), however, was added to the proposed legislation only for a limited purpose: to facilitate the determination by the Director of the Bureau of the Census under Section 4. In the 1965 House hearings, that official testified that without such a limitation he would have great difficulty in determining under Section 4(b) whether 50 per-

cent of eligible voters had registered and voted in the 1964 Presidential election. Hearing on H.R. 6400 before Subcommittee No. 5 of the House Committee on the Judiciary, 89th Cong., 1st Sess., pp. 78, 331-332, 335, 363 (1965).

Nothing in the history of the Act supports the holding below that when an entire state, or a separate political subdivision, is designated, Congress intended to exclude from clearance under Section 5 voting changes in cities or other governmental units within such states or political subdivisions simply because these units do not conduct voter registration. The legislative history indicates quite the contrary understanding. For example, in proposing an amendment which would have stricken Section 5, Senator Talmadge objected that it would otherwise require all local government units within a designated state to obtain preclearance under the Act (111 Cong. Rec. 10729 (1965)):

> The language in the pending bill is so phrased that it would relate to any voting qualifications or prerequisite to voting, standard, practice or procedure. No matter what kind of legislation might be involved, whether it be from a city council, a resolution of the county commissioners, or an act of the legislature of the States affected, they would have to come to Washington, D.C., and beg the Attorney General to allow them to implement their own legislation * * *.
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> * * * * *
>
> * * * If the officials of the town of McDonough * * * decided to change the date on which to hold

> a mayor's election [or] * * * [i]f a municipality in Georgia desired to hold an election relating to sewage bonds, it would have to come all the way to Washington, D.C., to obtain the approval of the Attorney General and of the District Court for the District of Columbia. * * *
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> * * * * *
>
> This is so far-fetched that if the city of Atlanta wished to hold a referendum to determine whether it would have a mayor-type city government or a city manager city government, and it enacted a law in its council and petitioned the general assembly to that effect, before it could go into effect, it would have to come to Washington to obtain the approval of the Attorney General and the District Court of the District of Columbia before it could implement it. * * * *[9]

In accordance with the Act's structure and history, the Attorney General has consistently interpreted the statute as requiring cities within covered states to submit proposed changes under Section 5 regardless of whether such cities conduct voter registration. Between August 6, 1965, and May 1, 1977, the Attorney General received more than 3,600 submissions of more than 8,100 proposed changes by political units within designated states or designated political subdivisions other than counties or parishes, including

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[9] Although this is a statement of an opponent of the bill, it is nevertheless relevant, particularly since the proponents did not disagree with the opponent's analysis. *Arizona* v. *California*, 373 U.S. 546, 583 n. 85. Indeed, this Court has previously noted Senator Talmadge's remarks in considering the scope of Section 5. See *Allen* v. *State Board of Elections*, 393 U.S. 544, 568, n. 32.

cities and school, water, and public utility districts. Fifty-six per cent of all Section 5 submissions and 58 per cent of the changes included in all submissions have been from such political units. Among these are almost 700 changes from 91 Alabama cities, noted *supra*, n. 3, p. 4. This contemporaneous administrative construction is significant evidence of the Act's meaning, especially in view of the Attorney General's role in drafting the statute.[10] See *Trafficante* v. *Metropolitan Life Insurance Co.*, 409 U.S. 205, 210; *Udall* v. *Tallman*, 380 U.S. 1, 16. Indeed, in *Perkins* v. *Matthews*, *supra*, this Court held that annexations by a city within the covered State of Mississippi were subject to the preclearance requirements of the Act.[11]

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[10] See testimony of Attorney General Katzenbach at the Hearings on H.R. 6400 before Subcommittee No. 5 of the House Committee on the Judiciary, 89th Cong., 1st Sess., p. 9 *et seq.* (1965); and testimony of Attorney General Katzenbach at the Hearings on S. 1564 before the Senate Committee on the Judiciary, 89th Cong., 1st Sess., p. 14 *et seq.* (1965).

See, also, Exhibit 5 to testimony of J. Stanley Pottinger at the Hearings on H.R. 939, H.R. 2148, H.R. 3247, and H.R. 3501 before the Subcommittee on Civil and Constitutional Rights of the House Committee on the Judiciary, 94th Cong., 1st Sess., pp. 183-185 (1975), listing Section 5 objections interposed by the Attorney General, all but those relating to changes proposed by cities within covered States.

[11] The district court apparently distinguishes *Perkins* on the ground that in Mississippi cities conduct voter registration and are therefore "political subdivisions" under Section 14(c)(2) (App. B, *infra*, p. 5a n. 6; App. C, *infra*, pp. 12a-13a). But nothing in this Court's opinion indicates that the conduct of registration was a prerequisite to the Court's conclusion that Section 5 applied to Mississippi cities because the State is covered. Moreover, a number of federal district courts have required that Section 5 procedures be satisfied when non-registering municipalities located within covered states enact voting changes. See, *e.g.*, *Darden* v. *City of Hueytown*, N.D. Ala., No. 76-P-1126-S, decided August 30, 1976 (three-judge court) (annexation); *Gaillard* v. *Young*, D. S.C., No. 74-1265, decided March 21, 1975 (reapportionment of Charleston City Council); *Woodard* v. *Lanier*, N.D. Ala., No. CA 74-H-752-S, decided October 22, 1974 (annexations by City of Bessemer); and *Jackson* v. *Land*, W.D. La., No. 15,845, decided June 16, 1972 (annexation by Town of Lake Providence).

Moreover, the Attorney General's administrative construction has been endorsed by Congress. During consideration of the 1970 extension of the Voting Rights Act (Pub. L. 91-285, 84 Stat. 314), the failure of the City of Anniston, Alabama, to obtain preclearance of a change in its electoral system was brought to the attention of Congress, and members of the Senate cited the Anniston situation as a reason for the retention of Section 5.[12] And in enacting the 1975 amendments to the Act (Pub. L. 94-73, 89 Stat. 402, 404) not only did Congress have before it the Attorney General's construction,[13] but both the House

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[12] Joint Views of 10 members of the Senate Judiciary Committee Relating to the Extension of the Voting Rights Act of 1965, 116 Cong. Rec. 5521 (1970).

[13] See testimony of J. Stanley Pottinger at the Hearings on H.R. 939, H.R. 2148, H.R. 3247, and H.R. 3501 before the Subcommittee on Civil and Constitutional Rights of the House Committee on the Judiciary, 94th Cong., 1st Sess., p. 165 *et seq.* (1975); Hearings on S. 407, S. 903, S. 1297, S. 1409, and S. 1443 before the Subcommittee on Constitutional Rights of the Senate Committee on the Judiciary, 94th Cong., 1st Sess., p. 535 *et seq.* (1975).

and Senate Reports cited,[14] as evils to be remedied, examples of changes in voting laws by municipalities and school districts within the State of Texas which diluted minority voting strength. The testimony from which these examples were drawn specifically noted that "[U]nder the provisions of Section 5 of the Voting Rights Act, all of these changes in electoral arrangements would have to meet preclearance through the Attorney General".[15] In none of these instances was any distinction drawn between political units that conduct voter registration and those that do not.

In view of this history,[16] it is evident that Congress agreed with the Attorney General's interpretation that the Act applies to changes in voting laws by all political units within states or separately designated political subdivisions. See *Georgia* v. *United States*, 411 U.S. 526, 533; *United States* v. *Correll*, 389 U.S. 299, 305-306; *Fribourg Navigation Co.* v.

[14] S. Rep. No. 94-295, 94th Cong., 1st Sess., pp. 27-28 (1975); H.R. Rep. No. 94-196, 94th Cong., 1st Sess., pp. 19-20 (1975).

[15] Hearings on S. 407, S. 903, S. 1297, S. 1409, and S. 1443 before the Subcommittee on Constitutional Rights of the Senate Committee on the Judiciary, 94th Cong., 1st Sess., p. 490 (testimony of Dr. Charles L. Cotrell) (1975).

[16] The legislative history cited by the district court (App. B, *infra*, p. 6a; App. C, *infra*, pp. 13a-14a) is not inconsistent with the foregoing. The term "political subdivision" in the cited passages from the Senate Report must be read in light of Congress purpose to limit political subdivisions for purposes of designation to political units from which the Bureau of the Census could obtain voting and registration data (see pp. 11-12, *supra*).

Commissioner, 383 U.S. 272, 283; *Costanzo* v. *Tillinghast*, 287 U.S. 341, 345.

The decision in the instant case conflicts with the decisions of other three-judge district courts requiring cities within covered states to obtain preclearance under Section 5 before implementing voting changes (see cases cited n. 11, *supra*, p. 14). Moreover, the question of the Act's application to non-registering political entities has now been raised in a series of cases pending in Texas. See *United States* v. *Board of Trustees of the Chapel Hill I.S.D.*, No. TY-77-137-CA (E.D. Tex.); *United States* v. *Westheimer I.S.D.*, Civ. No. 77-H-121 (S.D. Tex.); *United States* v. *Midland I.S.D.*, Civ. No. MO-77-17 (W.D. Tex.); *United States* v. *Hawkins I.S.D.*, Civ. No. TY-77-81 (E.D. Tex.); *Gomez* v. *Galloway* (City of Beeville), Civ. No. 76-146 (S.D. Tex.); *Hereford I.S.D.* v. *Bell*, Civ. No. 2-77-14 (N.D. Tex.)[17] It is presently un-

[17] In *Chapel Hill*, *Midland* and *Hawkins*, the school districts notified the Attorney General that in light of the *Sheffield* decision, they would not heed his Section 5 objections. The Attorney General brought suit to enjoin implementation of the voting changes absent Section 5 preclearance. The single-judge court dismissed, *Gomez* v. *Galloway*, *supra*, and, relying on that order, similar orders were entered in *Hereford I.S.D.*, *supra*, and *Coalition to Preserve Houston* v. *Westheimer I.S.D.*, Civ. No. 77-H-92 (S.D Tex.) (a private Section 5 suit raising the same issue as *United States* v. *Westheimer*, *supra*). However, the court of appeals reversed the dismissal in *Gomez* and ordered the convening of a three-judge court, C.A. 5, No. 77-1344, decided March 11, 1977. The district court in *Hereford I.S.D.*, *supra*, then ordered its dismissal order held in abeyance pending the convening of a three-judge court. *Coalition to Preserve Houston*, *supra*, is pending on appeal, No. 77-1320 (C.A. 5).

clear whether minority populations residing in non-registering political entities within designated states and political subdivisions are protected by Section 5 from local voting changes which may dilute or destroy the political rights Congress sought to guarantee. Moreover, local governments are now uncertain of their statutory obligations under the Act. The conflict, therefore, requires prompt resolution.

2. If, as we contend, Section 5 applies, the Attorney General's decision to interpose no objection to Sheffield's referendum did not constitute clearance under Section 5 of the method of electing city councilmen. In its submission to the Attorney General, Sheffield sought preclearance only for the referendum; it did not seek approval for the change in form of government which was effectuated by the referendum. Statement, *supra*, p. 4. Moreover, at the time the Attorney General decided not to object to the referendum (which, in the meantime, had already been held), he warned that any change would require preclearance (p. 5, *supra*). The city had not yet indicated the detailed changes that would take place under the new form of government. For example, there was some indication that wards as they had existed in 1912 would be restored although ward boundaries were yet to be drawn when the referendum took place (p. 6, *supra*). Under the pertinent regulations, the Attorney General considers a voting change prior to a referendum relating to that change only if "all other action necessary for adoption has been taken." 28 C.F.R. 51.7. In Sheffield, such action had not

yet been taken prior to the referendum. Indeed, after the referendum there followed an extensive correspondence between the City and the Attorney General concerning the actual nature of the change, and its effect on the city's substantial black population (pp. 5-6, *supra*). In the circumstances, therefore, the new form of city government was not before the Attorney General for clearance until the final plan for electing the council from defined wards was adopted and submitted by the city government.

CONCLUSION

Probable jurisdiction should be noted and the judgment of the district court should be reversed.

Respectfully submitted.

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MAY 1977.

APPENDIX A

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA, NORTHWESTERN DIVISION

Civil Action No. 76-M-1086

UNITED STATES OF AMERICA, PLAINTIFF

-v-

BOARD OF COMMISSIONERS OF SHEFFIELD, ALABAMA; F. E. DRAPER, Member and President, and B. F. WALDEN and DONALD F. RUGGLES, Members, DEFENDANTS

ORDER

Before Rives, Circuit Judge; and Grooms and McFadden, District Judges.

In conformity with the Memorandum Opinion entered contemporaneously herewith, it is

ORDERED, ADJUDGED and DECREED that plaintiff's motion for reconsideration of this Court's ruling of December 13, 1976, is hereby denied.

Done this 31st day of March, 1977.

/s/ Richard T. Rives
United States Circuit Judge

/s/ H. H. Grooms
United States District Judge

/s/ Frank H. McFadden
United States District Judge

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA,
NORTHWESTERN DIVISION

Civil Action No. 76-M-1086

UNITED STATES OF AMERICA, PLAINTIFF

-v-

BOARD OF COMMISSIONERS OF SHEFFIELD, ALABAMA; F. E. DRAPER, Member and President, and B. F. WALDEN and DONALD F. RUGGLES, Members, DEFENDANTS

MEMORANDUM OPINION

Before Rives, Circuit Judge; and Grooms and McFadden, District Judges.

McFadden, District Judge.

This cause comes before the Court on the motion of the United States for reconsideration of this Court's December 13, 1976 ruling. The United States filed suit on August 9, 1976 seeking to enjoin the defendants from changing from a Commission to a Mayor-Council form of government. On September 29, 1976 this Court denied relief and dismissed the complaint upon the ground that the Attorney General, pursuant to 42 U.S.C. § 1973c, had failed to interpose a timely objection to the defendants' proposed new form of government. The United States moved for reconsider-

ation, and on December 13 the motion was granted in that the Attorney General's objection was decreed as having been timely filed, but we again denied relief and dismissed the action based on our finding that the City of Sheffield was not a "political subdivision" as defined by the Voting Rights Act and was therefore not subject to the Section 5 pre-clearance requirements; and on the finding that when the Attorney General approved the referendum to determine whether the City would change to the Mayor-Council government he in effect approved the new form of government.

The Government's contention continues to be that under the circumstances presented [1] Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973c, is applicable and that defendants have not received federal pre-clearance of the new form of government by either of the two statutorily required methods.

The question presented is whether, in the circumstances of this case, the definition of political subdivision is applicable. We think it is.

> The term "political subdivision" shall mean any county or parish, except that where registration for voting is not conducted under the supervision of a county or parish, the term shall include any other subdivision of a State which conducts registration for voting.[2]

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[1] See this Court's Memorandum Opinion, December 13, 1976, for an accounting of the relevant facts.

[2] 42 U.S.C. § 1973*l*(c) (2).

The Government contends that Section 5 applies to all changes which affect voting in a covered State, as compared to one not covered, regardless of whether those voting changes are enacted or implemented in a political entity which is outside the definition. Essentially the contention is that "[i]f an entire state is determined to be covered the 'or in any political subdivision' language is not applicable, and the definition of 'political subdivision' has no relevance in determining the Section 5 obligations of the covered state." [3]

In support of its contention the Government refers us to the language of the Act, its legislative history, the Attorney General's consistent interpretation of the Act, enforcement of the Act by the courts, the fact that Congress has twice extended and amended the Act with knowledge of its interpretation and enforcement, and the actual number of submissions made to the Attorney General under § 1973c.

The pertinent language of the Act and its formal legislative history are in our judgment sufficient to ascertain the clear meaning of the statute.

Section 5 states in pertinent part:

> Whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title *based upon determinations made under the first sentence of section 1973b(b)* of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964. . .
>
> [Emphasis supplied].

[3] Brief of plaintiff at 6.

The first sentence of § 1973b(b) triggers the operation of Section 5. It reads in relevant part: [4]

> The provisions of subsection (a) of this section shall apply in any State or in any political subdivision of a State which (1) the Attorney General determines . . . *and with respect to which* (2) the Director of Census determines. . .
>
> [Emphasis supplied].

The State of Alabama was designated by both the Attorney General and the Director of Census under §§ 1973b(b)(1) and (2); [5] therefore, the State of Alabama is clearly subject to Section 5 of the Act. It is also clear that where the State has been designated by both the Attorney General and the Director of the Census, the political subdivisions are also covered by the Act. [6]

[4] The Voting Rights Act is replete with ". . . this section shall apply in any State or any political subdivision of a State which (1) the Attorney General determines . . . (2) the Director of Census determines . . ."

[5] See 30 Fed. Reg. 9897 (August 1, 1965).

[6] In our December 13 opinion, at p. 4, we said that *Perkins* v. *Mathews*, 400 U.S. 379 (1971), "involved the City of Canton, Mississippi, and the [Supreme] Court in a footnote without discussion stated that Mississippi and its subdivisions were covered. (400 U.S. 379, n. 2)." Mr. Justice Brennan went on to say however that:

[Footnote continued on page 6a]

The formal legislative purpose of § 1973b(b) reads in pertinent part:

> Where an entire State falls within this subsection [§ 1973b(b)(1) and (2)] so does each and every *political subdivision* within that State.'
>
> [Emphasis supplied.]

Accordingly, we are still convinced that the term "political subdivision" is relevant and defines the extent of applicability of Section 5 obligations in designated states. We find nothing in the Act, the legislative history,[8] or the cases, which take the Section

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[8] [Continued]

"In his unreported oral opinion granting temporary relief, he [district judge] *correctly stated*:

> 'The only questions to be decided by . . . the three judge court to be designated, [are] whether or not the *State of Mississippi or any of its political subdivisions* have acted in such a way as to cause or constitute a voting qualification or prerequisite to voting or standard, practice or procedure with respect to voting within the meaning of Section 5 . . .' "
>
> [Emphasis supplied.]

[7] 1965 *U.S. Congressional and Administrative News*, pp. 2456, 2561; see also, Post Trial of pl. at 2.

[8] The legislative history makes it doubly clear that 42 U.S.C. § 1973*l*(c)(2) was intended as a restriction on the coverage of the Act. As stated in our December 13, 1976 opinion (p. 5), the pertinent history reads:

> "Clause (2) of this subsection is new. It defines 'political subdivision' as a county or parish *except that in those instances where registration is not conducted under the supervision of a county or parish*, the term includes any other subdivision of a State which conducts registration for voting. *This definition makes clear that the term*

5 application beyond that point. It is as clear now as before that the City of Sheffield is not a political subdivision. The City neither registers voters nor supervises their registration. The Colbert County Board of Registrars conducts all voter registration for the City thereby excepting Sheffield from the Act's direct enforcement.[9]

The Government suggests that the term "political subdivision" has meaning only in a State which has not been covered under § 1973(b)(1) and (2) of the Act, but in which certain political subdivisions thereof have been designated making them subject to Section 5. This argument is in our judgment untenable, and would lead to anomalous results. It would require the application of Section 5 to all political units within a designated State, such as Alabama, notwithstanding their size, function or the fact that none of them register voters. It would permit a court to exempt such political units in an undesignated State or in a State designated by only the Attorney General or the Director, such as New York,[10] even though

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> *'political subdivision' is not intended to encompass precincts, election districts, or other similar units when they are within a county or* parish which supervises registration for voting."
>
> [Emphasis supplied.]

1965 *U.S. Code Congressional and Administrative News*, p. 2569; see also p. 2464.

[9] Title 17, § 21, Code of Alabama (Recomp. 1958); Title 37, § 34(35), Code of Alabama (Cum. Supp. 1973).

[10] See *United Jewish Organization of Williamsburgh* v. *Carey*, 45 U.S.L.W. 4221 (U.S. March 1, 1977).

the political unit involved was within a political subdivision designated by both the Attorney General and Director, or for that matter even if all the political subdivisions of that State had been individually designated by the Attorney General and the Director of Census. This Court simply does not read the language or the underlying legislative intent of the Voting Rights Act as calling for such disparate treatment of political entities.[11]

Accordingly, for the reasons herein set forth, together with those stated in our Memorandum Opinion of December 13, 1976, the Court is of the opinion that plaintiff's motion for reconsideration is due to be denied.

/s/ Richard T. Rives
United States Circuit Judge

/s/ H. H. Grooms
United States District Judge

/s/ Frank H. McFadden
United States District Judge

March 28, 1977

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[11] Even though our holding that the Act is inapplicable makes any further finding unnecessary, the majority of the Court remains of the opinion, assuming the applicability of the Act, that the Attorney General's approval of the referendum constituted approval of the form of government that followed. (See our Memorandum Opinion dated December 13, 1976.)

APPENDIX C

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA, NORTHWESTERN DIVISION

Civil Action No. 76-M-1086

UNITED STATES OF AMERICA, PLAINTIFF

-v-

BOARD OF COMMISSIONERS OF SHEFFIELD, ALABAMA; F. E. DRAPER, Member and President, and B. F. WALDEN and DONALD F. RUGGLES, Members, DEFENDANTS

MEMORANDUM OPINION

Before Rives, Circuit Judge, and Grooms and McFadden, District Judges.

McFadden, District Judge.

The Attorney General of the United States initiated this action pursuant to the Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973(c), seeking to enjoin the implementation of a proposed change in the form of the government of the City of Sheffield, Alabama, to the extent that it provides for an at-large method of electing city councilmen until federal pre-clearance by either of the two statutorily required methods has been obtained.

On March 20, 1975, the City of Sheffield, pursuant to Section 5 of the Voting Rights Act, submitted to

the Attorney General of the United States for pre-clearance a proposal for conducting a referendum to determine "whether the present commission form of government shall be abandoned in favor of the Mayor and Aldermen form of government." The Attorney General did not object to the holding of the referendum, but cautioned that the change to the new form of government remained subject to the pre-clearance requirements of Section 5. The voters of the City approved the referendum on May 13, 1975, thereby authorizing a change from a Commission form of government to a Mayor-Council City Government. On October 23, 1975, the Attorney General received the City's submission for pre-clearance of the change to the Mayor-Council Government, which the City contends was unnecessary, but done out of an abundance of caution. On December 22, 1975, the Attorney General requested additional information, which he received on May 5, 1976. On July 6, 1976, the Attorney General interposed an objection to the proposed at-large method of electing City Councilmen under the new form of government and on August 9, 1976, initiated an action seeking to enjoin the election of City Councilmen under the new plan.

This Court, on September 29, 1976, denied plaintiff's request for an injunction and dismissed its complaint on the basis that the Attorney General's objection of July 6 was untimely; thereafter this Court was asked by plaintiff to reconsider the Court's ruling of September 29. The September 29 ruling provided, inter alia, the following:

> Plaintiff merely offers the Executive Order to demonstrate that Monday, July 5, as a 'federal holiday,' citing the Executive Order without more. No evidence of the number of percentage of federal employees excused under the Executive Order was presented to the Court. The Court is of the opinion that plaintiff has failed in its burden to establish an exception to the rule [that a limitations period should be allowed to run unmolested unless an exception is demonstrated] and accordingly the objection was untimely.

This Court remains of the opinion that plaintiff failed at trial and in its post-trial brief to demonstrate that July 5, 1976, was a federal holiday for employees of the Justice Department; however, after considering the Government's Rule 59, Fed. R. Civ. P., motion and in taking cognizance of the affidavits filed therewith, the Court is now satisfied that July 5 was a federal holiday for employees of the Justice Department, making July 6 the next full business day for the Attorney General which under his regulations would make the objection timely. (We assume the validity of the regulation for the purpose of this case, but express no opinion thereon.) Accordingly, the Court is of the opinion that plaintiff's Rule 59 motion is due to be granted to the extent that July 6, 1976 was the next full business day for the Attorney General and his employees; therefore making the objection timely. 28 C.F.R. § 51.3(c).

Since the Court, in its opinion of September 29, did not address several issues, it is now necessary to do so.

1. Is the City of Sheffield, Alabama, a "political subdivision" as defined by the Act and as reflected by the Act's legislative history?

2. Did the Attorney General's approval of the referendum have the force and effect of also approving the change from a Commission to a Mayor-Council form of government?

This Court previously held that the City of Sheffield was covered by the Act, relying on *Perkins* v. *Mathews*, 400 U.S. 379 (1971), but upon further analysis the Court is of the opinion that this was error. *Perkins* involved the City of Canton, Mississippi, and the Court in a footnote without discussion stated that Mississippi and its subdivisions were covered. (400 U.S. 379, n. 2)

All reported cases which the Court has found applying the Voting Rights Act to municipalities have involved either state legislative enactments clearly subject to the Act, such as did *Robinson* v. *Pottinger*, 512 F.2d 775 (5th Cir. 1975), and *United States* v. *Cohan*, 358 F. Supp. 1217 (S.D. Ga. 1972); or they involved cities which do in fact conduct or supervise registration of voters. Of the latter type are *Perkins* v. *Mathews*, *supra* (see Miss. Code Ann. § 21-11-3); *Allen* v. *Board of Elections*, 393 U.S. 544 (1969) (see Code of Va. Tit. 24.1, §§ 43-46, Cum. Supp.

1976);[1] *United States* v. *Garner*, 349 F. Supp. 1054 (N.D. Ga. 1972) (see Ga. Code Ann. § 34A-502); and *Beer* v. *United States*, 425 U.S. 130 (1976) (see La. Rev. Stat. §§ 18:270.101, 18:270.105, and 18:207.301, Cum. Supp. 1976).[2]

Designated states and subdivisions under the Act are subject to the pre-clearance procedures of section 5, when they "enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice or procedure with respect to voting different from that in force or effect on November 1, 1964. . ." 42 U.S.C.S. 1973(c), as amended. The Attorney General's designation of a state implies his designation of its political subdivisions. 1965 *U.S. Code Congressional and Administrative News*, pp. 2456, 2561. Political subdivision is clearly defined in the Act, 42 U.S.C. § 1973*l*(c)(2): "The term 'political subdivision' shall mean any county or parish,

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[1] The statement in *Allen* that § 5 applies to city as well as county governments is consistent with § 1973*l*(c)(2) in that, "In Virginia, cities and counties are mutually exclusive." *Holt* v. *Richmond*, 459 F.2d 1093 (4th Cir. 1972).

[2] The government of the City of New Orleans and Parish of Orleans is *sui generis* in the State of Louisiana. The boundaries of the city and the parish are coextensive, and there is no general administrative body for the government of the parish, the City Council of New Orleans performing the duties which are performed in other parishes by the parochial governing bodies. Registration of voters is conducted by the Registrar of the Parish of Orleans, who is, however, appointed by the City Council, which provides that official with office space and pays that portion of his salary which is in other parishes the responsibility of the parish authorities.

except that where registration for voting is not conducted under the supervision of a county or parish, the term shall include any other subdivision of a State which conducts registration for voting."

The legislative history of this section makes it clear that this section was intended as a restriction on the coverage of the Act.

> Clause (2) of this subsection is new. It defines 'political subdivision' as a county or parish except that in those instances where registration is not conducted under the supervision of a county or parish, the term includes any other subdivision of a State which conducts registration for voting. This definition makes clear that the term 'political subdivision' is not intended to encompass precincts, election districts, or other similar units when they are within a county or parish which supervises registration for voting.

1965 *U.S. Code Congressional and Administrative News*, p. 2569; see also p. 2464.

Under Alabama law municipalities neither conduct nor supervise registration of voters. All registration powers are vested in County Boards of Registrars which furnish voter lists to municipalities. Tit. 17, § 21, Code of Alabama (Recomp. 1958); see also Tit. 37, § 34(35) Code of Alabama (Cum. Supp. 1973). Accordingly, this Court is of the opinion that the City of Sheffield is not covered by the Voting Rights Act of 1965. It is a political unit, but within a county which supervises registration for voting; therefore, falling outside the definition of "political subdivision"

as defined by the Act and the legislative history thereof.

This Court is further of the opinion that by approving the referendum the Attorney General in fact approved the change to the Mayor-Council form of government notwithstanding his caution to the City that the change was also subject to pre-clearance.

After the referendum was adopted, the Attorney General objected to the new form of government on the basis of the at-large method of electing the City Councilmen and indicated a preference for separate election districts. He did not object to the at-large method of electing the Mayor or the Council President. Prior to approval of the referendum the Attorney General was made aware that under the law of Alabama, if the referendum was adopted, the City would be obliged to follow the directive of Tit. 37, § 426, Code of Alabama (Recomp. 1958), which provides, inter alia, for the at-large election of Mayor, Council President and City Councilmen. The Attorney General's approval of the referendum may be characterized in one of the two ways. First, his approval of the referendum carried with it an implicit approval of the new government. Secondly, his approval of the referendum terminated his authority under the Act to further oversee the results of the referendum, since the new government thereby adopted is mandated by Alabama law.

Accordingly, it is the opinion of this Court that the Attorney General's approval of the referendum, paired with his actual or constructive knowledge of

Tit. 37, § 426, precludes further objection to the City's new form of Government.

Other courts have called the Attorney General's authority into question in voting right cases. The case of *Jenness* v. *Little*, 306 F. Supp., 925, 927 (N.D. Ga. 1969) (three-judge district court, involved an attack on the validity of a municipal ordinance requiring the payment of qualifying fees by candidates for municipal offices. The Court in *Jenness* held the ordinance unconstitutional but rejected a contention that it required the Attorney General's approval:

> The contention that the new ordinance establishing a new schedule of fees had to likewise be approved by the Attorney General is rejected. This ordinance was adopted pursuant to Georgia Municipal Election Code of 1968, supra, which expressly permitted the exaction of qualifying fees (Ga. Ann. Code Supp. § 34A-904) and that Act has been approved by the Attorney General in compliance with the Voting Rights Act, supra.

This Court is likewise of the opinion that the Attorney General may not, by authority of the Act, continue to oversee the results of a "change" he has approved.

In the instant case, the at-large method of electing City Councilmen followed as a matter of law under Tit. 37, § 426, when the voters of the City adopted the referendum. The Attorney General approved the change in form of government and now wishes to

object to the specific effects which are required under Alabama law. The Attorney General's approval of the change in form of government in which the features now found objectionable were incorporated as a matter of law exhausted his authority under the Voting Rights Act to further oversee the consequences of that approval. By approving the referendum the Attorney General at least implicitly approved the change that followed. The Act is not designed to allow an uninterrupted surveillance by the Attorney General of "changes" he has approved. Challenge of a "change," approved by the Attorney General, is given to private action by those with standing. *NAACP* v. *New York*, 413 U.S. 345, 352 (1973); *Beer* v. *United States*, 425 U.S. 130, 96 S. Ct. 1357, 1364 (1976).

Accordingly, the Government's request for an amendment to the Order of September 29, 1976 will be granted to the extent that the Court now considers the July 6 objection as having been timely interposed; but, for the reasons stated herein, the Govern-

ment's request for injunctive relief is still due to be denied and the complaint dismissed.

/s/ Richard T. Rives
United States Circuit Judge
Concurring Specially,
Opinion attached.

/s/ Frank H. McFadden
United States District Judge

/s/ H. H. Grooms
United States District Judge

Dated: December 13, 1976

UNITED STATES OF AMERICA, PLAINTIFF

-v-

BOARD OF COMMISSIONERS OF SHEFFIELD, ALABAMA: F. E. DRAPER, Member and President; and B. F. WALDEN and DONALD F. RUGGLES, Members, DEFENDANTS

RIVES, Circuit Judge, concurring specially:

I have joined in the separate "Order" because I concur in that part of the Opinion holding that the City of Sheffield is not a "political subdivision" as defined by the Act and its legislative history. I do not concur in that part of the Opinion holding that the Attorney General's *failure* to object to the referendum had the force and effect of *approving* any future changes found desirable for the implementation of the referendum. It seems to me that the Attorney General's letter of May 23, 1975 expressly conditioned his failure to object to the holding of the referendum by stating that the implementation or enforcement of the change in form of government is subject to the pre-clearance requirement of Section 5 of the Voting Rights Act.

APPENDIX D

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA, NORTHWESTERN DIVISION

Civil Action No. 76-M-1086

UNITED STATES OF AMERICA, PLAINTIFF

-v-

BOARD OF COMMISSIONERS OF SHEFFIELD, ALABAMA; F. E. DRAPER, Member and President; and B. F. WALDEN and DONALD F. RUGGLES, Members, DEFENDANTS

ORDER

This cause came before the Court on the Government's Rule 59 Fed. R. Civ. P. motion for reconsideration and amendment to this Court's Order of Septemper 29, 1976. The Court has considered the motion, briefs of both parties, pleadings, affidavits, and the applicable statutory and case law and in accordance with the Memorandum Opinion filed contemporaneously herewith is of the opinion that the Government's motion is due to be granted to the extent that the Attorney General's July 6 objection was timely interposed, but that the injunctive relief sought is due to be denied and the complaint dismissed.

Accordingly, it is ORDERED, ADJUDGED and DECREED that the Government's Rule 59 motion be and the same hereby is granted and the previous opinion and order of the Court is withdrawn.

Further, it is ORDERED that the Government's application for an injunction be and the same is denied and the complaint is dismissed.

Costs are taxed to the Government.

Done this 13th day of December, 1976.

/s/ Richard T. Rives
United States Circuit Judge

/s/ Frank H. McFadden
United States District Judge

/s/ H. H. Grooms
United States District Judge

APPENDIX E

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA,
NORTHWESTERN DIVISION

Civil Action No. 76-M-1086

UNITED STATES OF AMERICA, PLAINTIFFS

v.

BOARD OF COMMISSIONERS OF SHEFFIELD, ALABAMA, ET AL., DEFENDANTS

NOTICE OF APPEAL

Please take notice that the United States of America, plaintiff in this action, hereby appeals to the United States Supreme Court from the order of the three-judge district court entered on March 31, 1977 denying plaintiff's motion for reconsideration of the district court's ruling of December 13, 1976. The appeal is taken pursuant to 28 U.S.C. section 1253.

/s/ WAYMAN G. SHERRER
United States Attorney

by CARYL P. PRIVETT
Assistant United States Attorney

May 11, 1977

APPENDIX F

Section 4 of the Voting Rights Act of 1965, 79 Stat. 439, as amended, 42 U.S.C. (Supp. V) 1973b, provides:

> (a) To assure that the right of citizens of the United States to vote is not denied or abridged on account of race or color, no citizen shall be denied the right to vote in any Federal, State, or local election because of his failure to comply with any test or device in any State with respect to which the determinations have been made under the first two sentences of subsection (b) of this section or in any political subdivision with respect to which such determinations have been made as a separate unit, unless the United States District Court for the District of Columbia in an action for a declaratory judgment brought by such State or subdivision against the United States has determined that no such test or device has been used during the seventeen years preceding the filing of the action for the purpose or with the effect of denying or abridging the right to vote on account of race or color: *Provided*, That no such declaratory judgment shall issue with respect to any plaintiff for a period of seventeen years after the entry of a final judgment of any court of the United States, other than the denial of a declaratory judgment under this section, whether entered prior to or after the enactment of this subchapter, determining that denials or abridgments of the right to vote on account of race or color through the use of such tests or devices have occurred anywhere in the territory of

such plaintiff. No citizen shall be denied the right to vote in any Federal, State, or local election because of his failure to comply with any test or device in any State with respect to which the determinations have been made under the third sentence of subsection (b) of this section or in any political subdivision with respect to which such determinations have been made as a separate unit, unless the United States District Court for the District of Columbia in an action for a declaratory judgment brought by such State or subdivision against the United States has determined that no such test or device has been used during the ten years preceding the filing of the action for the purpose or with the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in subsection (f)(2) of this section: *Provided*, That no such declaratory judgment shall issue with respect to any plaintiff for a period of ten years after the entry of a final judgment of any court of the United States, other than the denial of a declaratory judgment under this section, whether entered prior to or after the enactment of this paragraph, determining that denials or abridgments of the right to vote on account of race or color, or in contravention of the guarantees set forth in subsection (f)(2) of this section through the use of tests or devices have occurred anywhere in the territory of such plaintiff.

An action pursuant to this subsection shall be heard and determined by a court of three judges in accordance with the provisions of section 2284

of Title 28 and any appeal shall lie to the Supreme Court. The court shall retain jurisdiction of any action pursuant to this subsection for five years after judgment and shall reopen the action upon motion of the Attorney General alleging that a test or device has been used for the purpose or with the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in subsection 1973b(f)(2) of this section.

If the Attorney General determines that he has no reason to believe that any such test or device has been used during the seventeen years preceding the filing of an action under the first sentence of this subsection for the purpose or with the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in subsection (f)(2) of this section, he shall consent to the entry of such judgment.

If the Attorney General determines that he has no reason to believe that any such test or device has been used during the ten years preceding the filing of an action under the second sentence of this subsection for the purpose or with the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in subsection (f)(2) of this section, he shall consent to the entry of such judgment.

(b) The provisions of subsection (a) of this section shall apply in any State or in any political subdivision of a state which (1) the Attorney General determines maintained on November 1, 1964, any test or device, and with respect to

which (2) the Director of the Census determines that less than 50 per centum of the persons of voting age residing therein were registered on November 1, 1964, or that less than 50 per centum of such persons voted in the presidential election of November 1964. On and after August 6, 1970, in addition to any State or political subdivision of a State determined to be subject to subsection (a) of this section pursuant to the previous sentence, the provisions of subsection (a) of this section shall apply in any State or any political subdivision of a State which (i) the Attorney General determines maintained on November 1, 1968, any test or device, and with respect to which (ii) the Director of the Census determines that less than 50 per centum of the persons of voting age residing therein were registered on November 1, 1968, or that less than 50 per centum of such persons voted in the presidential election of November 1968. On and after August 6, 1975, in addition to any State or political subdivision of a State determined to be subject to subsection (a) of this section pursuant to the previous two sentences, the provisions of subsection (a) of this section shall apply in any State or any political subdivision of a State which (i) the Attorney General determines maintained on November 1, 1972, any test or device, and with respect to which (ii) the Director of the Census determines that less than 50 per centum of the citizens of voting age were registered on November 1, 1972, or that less than 50 per centum of such persons voted in the Presidential election of November 1972.

A determination or certification of the Attorney General or of the Director of the Census under this section or under section 1973d or 1973k of this title shall not be reviewable in any court and shall be effective upon publication in the Federal Register.

Section 5 of the Voting Rights Act of 1965, 79 Stat. 439, as amended, 42 U.S.C. (Supp. V) 1973c, provides:

Whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the first sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964, or whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the second sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1968, or whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the third sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting

qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1972, such State or subdivision may institute an action in the United States District Court for the District of Columbia for a declaratory judgment that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title, and unless and until the court enters such judgment no person shall be denied the right to vote for failure to comply with such qualification, prerequisite, standard, practice, or procedure: *Provided*, That such qualification, prerequisite, standard, practice, or procedure may be enforced without such proceeding if the qualification, prerequisite, standard, practice, or procedure has been submitted by the chief legal officer or other appropriate official of such State or subdivision to the Attorney General and the Attorney General has not interposed an objection within sixty days after such submission, or upon good cause shown, to facilitate an expedited approval within sixty days after such submission, the Attorney General has affirmatively indicated that such objection will not be made. Neither an affirmative indication by the Attorney General that no objection will be made, nor the Attorney General's failure to object, nor a declaratory judgment entered under this section shall bar a subsequent action to enjoin enforcement of such qualification, prerequisite, standard, practice, or procedure. In the event the Atorney General affirmatively indicates that no objection will be made within the sixty-day period following receipt of a submission, the Attorney General may reserve the right to reexamine the submission if additional information comes to his attention during the remainder of the sixty-day period which would otherwise require objection in accordance with this section. Any action under this section shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of Title 28 and any appeal shall lie to the Supreme Court.

Section 14(c)(2) of the Voting Rights Act of 1965, 79 Stat. 439, as amended, 42 U.S.C. 1973*l*(c)(2), provides:

> (2) The term "political subdivision" shall mean any county or parish, except that where registration for voting is not conducted under the supervision of a county or parish, the term shall include any other subdivision of a State which conducts registration for voting.

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